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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,662	06/04/2001	Ramon L. Klemmensen	10968.00003	4258

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT PAPER NUMBER

3618

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

Office Action Summary

Application No.

09/873,662

Applicant(s)

KLEMMENSEN ET AL.

Examiner

Christopher Bottorff

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration. *(dependent on cl. 1)*
- 5) ☒ Claim(s) 1-8 and 14-16 is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☒ Claim(s) 17, 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The amendment filed August 15, 2003 has been entered. Claims 17 and 18 are added. Claims 1-18 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-13, 14/9, 15/9, and 16/9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. US 5,575,362 in view of Tiramani et al. US 6,176,559 and Marchwiak et al. US 5,431,428.

Franklin et al. discloses a portable container having a container 22 including a generally vertical side wall 92 and an open top with a cover 116. See Figures 1-4 and 14, and column 5, lines 6-13. Two wheels, 96 and 96', are each attached to the container adjacent the side wall for supporting the container. See Figure 1. A telescoping handle 30 is attached to the side wall, and the side wall includes an integral through passage for the handle between guide rails 102 and 102'. See Figures 4 and 6, and column 5, lines 16-23. The wheels are mounted on each side of the passage. See Figure 1. Also, the container includes a cover 116, 118 and latch mechanism. See column 4, lines 63-67.

The handle includes first and second telescoping members, wherein the second member 100 comprises a housing for the first member 60, 110, 110'. See Figure 1. The second member is slidably mounted in the through passage and the first member is slidably mounted in the second member. See Figure 6. The second member and the passage each include projection stop members, 112 and 114 respectively, that limit the telescopic movement of the second member. See Figures 4 and 6, column 5, lines 49-52. The first member includes a projecting stop member 46 for engaging the housing to limit extension of the first member from the housing. See Figures 4 and 7. Also, the passage and housing have a generally rectangular cross sectional profile. See Figures 4 and 6.

Franklin et al. does not disclose that the container is a tool container in the form of a tub, that the first member includes a manually engageable and releasable first biased stop member that engages either first or second spaced ledges on the second member, that the container is formed of molded plastic, or that the container includes nesting trays. However, Tiramani et al. teaches that providing a container as a molded plastic tool container in the form of a tub was old and well known in the art at the time the invention was made. See column 1, lines 8-10, column 8, lines 57-58, column 9, lines 11-12, and column 12, lines 42-44. Also, providing nesting trays 12 was also old and well known at the time the invention was made. See Figure 31. Furthermore, Marchwiak et al. teaches that the practice of providing a first member 74 of a telescoping handle with a manually engageable and releasable biased stop member 86 for engaging first and second spaced ledges 90 of a second member 80 was old and

Art Unit: 3618

well known in the art at the time the invention was made. See Figures 13 and 13a, and column 3, lines 51-61, and column 5, lines 23-32.

From the teachings of Tiramani et al., forming the container of Franklin et al. as a molded plastic tool container in the form of a tub would have been obvious to one of ordinary skill in the art at the time the invention was made. This would allow a workman to easily store and transport his equipment. Also, this would utilize a manufacturing process (molding) that is familiar to manufacturing personnel and would produce a strong and lightweight structure. Providing the container of Franklin et al. with nesting trays would have been obvious to one of ordinary skill in the art at the time the invention was made so that items can be efficiently organized within the container.

From the teachings of Marchwiak et al., providing the first member of Franklin et al. with a manually engageable and releasable first biased stop member that engages either first or second spaced ledges on the second member would have been obvious to one of ordinary skill in the art at the time the invention was made. This would help to lock the handle in position.

Allowable Subject Matter

Claims 1-8, 14/1, 15/1, and 16/1 are allowed. Claim 1 defines a first projecting stop member projecting outwardly from the housing adjacent the bottom end of the housing, a second stop member projecting outwardly from the housing vertically above and spaced from the first stop member, and first and second projecting engagement tabs on the passage for engaging the first and second stop members respectively. The

prior art does not teach this feature in combination with the further limitations of the claims.

Claims 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The second biased stop member of Franklin et al. is not provided on the second member 54, and the prior art does not suggest such a modification.

Response to Arguments

Applicant's arguments filed August 15, 2003 have been fully considered but they are not persuasive.

Applicants assert that claim 9 distinguishes over the combination of Franklin et al. and Tiramani et al. because the first member does not include a biased stop member that is manually engageable and releasable. However, the rejection of claim 9 is based upon the combination of Franklin et al, Tiramani et al., and Marchwiak et al., with Marchwiak et al. teaching the manually engageable and releasable biased stop member on the first member. As stated in the first office action and the rejection above, the examiner concedes that the first member of Franklin et al. does not include a biased stop member that is manually engageable and releasable, and that Marchwiak et al. teaches that such a structure was old and well known in the art. Based on the teachings of Marchwiak et al., modifying the apparatus of Franklin et al. to include this structure would have been obvious to one of ordinary skill in the art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

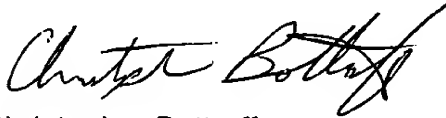
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 3618

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher Bottorff



BRIAN L. JOHNSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600 9/22/07